

# BRAVERMAN | GREENSPUN

A PROFESSIONAL CORPORATION

December 5, 2018

Hon. Paul G. Gardephe  
United States District Courthouse  
40 Foley Square, Room 705  
New York, New York 10007

Re: *Donovan v. East Twelfth Street Tenants Housing Development  
Fund Corporation*  
Docket No. 18-CV-06950

Dear Judge Gardephe:

This office represents the defendant in the above-referenced matter. This letter shall respond to Plaintiff's letter motion, dated November 30, 2018, seeking leave to file an amended complaint.

Initially, we note that Plaintiff has failed to cite to any legal basis for his letter motion, or any cases in support of his letter motion. Defendant assumed that the letter motion is being submitted pursuant to F.R.C.P. 15. According to F.R.C.P. 15, a party may amend a pleading within 21 days after service of the pleading or within 21 days after service of a motion under Rule 12(b). Additionally, when moving to amend, a party must include a copy of the proposed pleading to their papers. *See*, FRCP 15; *Davidson v. Canfield*, 2012 WL 4464649, \*2 (W.D.N.Y. 2012); *Sbar v. Dist. Counsel 37 Health & Security Fund Trust*, 2006 WL 692023 \*1 (S.D.N.Y. 2006).

Plaintiff commenced this action on August 2, 2018. By August 28, 2018, Plaintiff knew that his Complaint lacked merit as this Court issued an Order holding that Plaintiff was unable to demonstrate a "probability of success on the merits" as the Defendant is not a state actor under Federal law. *See*, Docket 22-4 at p. 11. Thereafter, Plaintiff failed to oppose Defendant's letter motion, dated September 27, 2018, which sought leave to move to dismiss the Complaint. *See*, Docket No. 19.

Defendant, pursuant to this Court's Order dated October 19, 2018 (Docket No. 21) then timely filed a motion to dismiss the Complaint on November 7, 2018. Pursuant to Rule 15(a), Plaintiff could have amended his Complaint on or before November 28, 2018. Plaintiff failed to do so and instead submitted opposition to the motion on that date. Two days later, Plaintiff

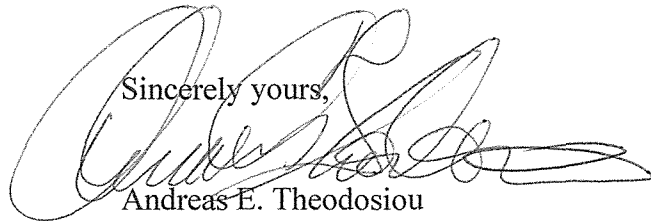
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submitted a letter motion seeking leave to amend his Complaint, without actually attaching the proposed amendment – a requirement under Rule 15.

As Plaintiff has moved in an untimely manner, and has done so without attaching a copy of the proposed amended pleading, Plaintiff's letter motion seeking leave to amend his complaint must respectfully be denied.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Andreas E. Theodosiou', with a large, stylized initial 'A'.

Andreas E. Theodosiou